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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its October 12, 2010 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcountry.ca.gov/clerb.

CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (6)

ALLEGATIONS, FINDINGS & RATIONALE

09-093

- False Arrest – Deputy 1 issued the complainant a traffic citation for an illegal U-turn that is in conflict with a DMV (Department of Motor Vehicles) Handbook.

Board Finding: Action Justified

Rationale: Deputy 1 issued a citation to Mr. Martinez for making an improper left /U-turn that was initiated from a lane position deemed to be unsafe. The complainant's U-turn started from the right side in the number 2 lane in violation of the California Vehicle Code and the Department of Motor Vehicle's Handbook. The Department of Motor Vehicle Handbook, to which the complainant referred in support of his position, states that, in order to make a legal U-turn, the driver must signal and use the far left lane or the center left turn lane. Deputy 1's actions then were lawful, justified and proper.

2. Criminal Conduct – Deputy 1 disobeyed the very law the complainant was cited for and made a U-turn across three lanes of traffic with no emergency signals.

Board Finding: Not Sustained

Rationale: There are conflicting accounts as to the specific location and execution of Deputy 1's U-turn and its corresponding legality. In the absence of witnesses or video surveillance, there is no way to determine which account is true and therefore, there is insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 1 made a mistake writing the citation, delaying the complainant's court appearance.

Board Finding: Action Justified

Rationale: Deputy 1 issued a traffic citation citing a California Vehicle Code Section with a conflicting description. Deputy 1 followed procedural requirements by setting the appearance date far enough ahead to allow for correction of any errors that could cause delay. Immediately upon notification from the Courts that the California Vehicle Code section and description of the maneuver did not match, he issued a Notification of Correction. Deputy 1's actions were lawful, justified and proper.

4. False Reporting – Deputy 1 offered into traffic court evidence a scene sketch that was incorrect.

Board Finding: Not Sustained

Rationale: As in allegation number two, the parties disagree as to where the complainant's turning motion was conducted. No evidence was presented, nor did any emerge proving that Deputy 1's scene sketch was incorrectly drawn or falsely presented to court. There is again insufficient evidence to either prove or disprove the allegation.

09-096

1. False Arrest – Probation Officer 2 arrested the aggrieved on August 10, 2009.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Probation Officer 2 handcuffed the aggrieved outside his home, which alerted neighbors to his charges and caused them to threaten the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Supervising Probation Officer 1 defended her employee (PO 2) against Probation policy.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Discourtesy – Supervising Probation Officer 1 laughed at the aggrieved.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. False Arrest – Probation Officer 3 arrested the aggrieved on October 9, 2009.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

09-103

1. Discrimination/Religious – Deputy 1 prohibited the complainant from attending Bible Study at SDCJ.

Board Finding: Action Justified

Rationale: As a Level 5, Protective Custody inmate, the complainant was in one of the highest risk classes at San Diego Central Jail (SDCJ). He was placed in Protective Custody at his request, which required the initiation of additional safety protocols for his protection. Protective Custody involved separation from other inmates in several programs, including the facilities' worship services. Each Facility Commander has limited discretionary authority to assess specific risk factors and determine who is allowed to participate in their programs. Per SDCJ's policies and assessments, Deputy 1's actions were lawful, justified, and proper.

POLICY RECOMMENDATION

It is recommended that the Sheriff's Department issue notice to corrections facility commanders to ensure compliance with San Diego County Sheriff's Department Detention Services Bureau – Manual of Policies and Procedures W-5 – Inmate Church Services. The notice should direct facility commanders to develop inmate sign-up procedures, criteria, and staff screening guidelines for inmates desiring to participate in church services.

09-125

1. Misconduct/Procedure – The Sheriff's Department Policy & Procedure differs from Penal Code provisions with regard to obtaining a license to carry a concealed weapon.

Board Finding: Summary Dismissal

Rationale: Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340 340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department. Carry Concealed Weapon (CCW) license applications are processed by the Department's licensing bureau, which is operated by professional staff and managed by a non-sworn professional staff manager, and as such, the Review Board lacks jurisdiction.

2. Misconduct/Procedure – The Sheriff's Department Policy & Procedure differs from Penal Code provisions concerning minimum firearms safety course requirements.

Board Finding: Summary Dismissal

Rationale: See Allegation #1.

3. Misconduct/Discourtesy – Unidentified deputies made “negative references to the complainant's appearance” at a CLERB Board meeting.

Board Finding: Summary Dismissal

Rationale: See Allegation #1.

4. Misconduct/Procedure - The Sheriff's Department denied the complainant's application for a CCW (concealed carrying of a weapon) license.

Board Finding: Summary Dismissal

Rationale: See Allegation #1.

5. Criminal Conduct – The Sheriff’s Department’s charges monies for CWW applications that are prohibited by law.

Board Finding: Summary Dismissal

Rationale: See Allegation #1.

POLICY RECOMMENDATION

It is recommended that the Sheriff’s Department review and update all procedures associated with the Standard Application for License to Carry a Concealed Weapon (CCW). Application requirements, denial procedures, and appeal rights should be clearly identified, in conformance with *California Penal Code §12050-12054*, and relevant information considered for inclusion in the *San Diego County Code of Regulatory Ordinances, Chapter 1, Uniform Licensing Procedure*, and *The San Diego County Sheriff’s Department Policies and Procedures Manual*.

10-004

1. Misconduct/Procedure - Deputy 1 threw the complaint’s property bags in the air to damage the contents of the bags.

Board Finding: Unfounded.

Rationale: There is no evidence that Deputy 1 or Deputy 2 mishandled the complainant’s property causing it to be crushed or destroyed. There is no record of that the complaint submitted a Claim for Lost or Damaged Personal Property. The evidence shows the alleged act did not occur.

10-090

1. Misconduct/Procedure – Officer 1 contacted the complainant for fog lights when no fog was present.

Board Finding: Summary Dismissal

Rationale: On September 17, 2010, the Grand Jury forwarded a signed complaint from Marcus Turner. The incident involved officers of the Oceanside Police Department over whom CLERB has no authority. The Review Board lacks jurisdiction based upon CLERB Rules and Regulations, 4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340 340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department...

2. Illegal Search & Seizure – Officer 1 handcuffed and searched the complainant and subsequently his vehicle, after the complainant exercised his right to decline the Deputy’s request for a search.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. False Arrest – Officer 1 arrested the complainant for being under the influence of a controlled substance.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. False Reporting – Officer 1 falsified his police report with regard to a turn signal violation.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Officer 2 failed to conduct a proper and/or thorough investigation into a complaint against Officer 1.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.
